



# Protecting Your Biosolids Program – Legal Considerations

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# The 1987 Clean Water Act Amendments Added Section 405 to the Act Which Governs the Management of Sewage Sludge

- Directs EPA to prepare regulations governing the disposal or utilization of sewage sludge.
- Regulations should identify and describe how to protect public health and the environment from toxic pollutants in the sludge.
- Review of toxic pollutants every two years.

## Federal Regulatory Authority

- 40 CFR Part 503 – Standards for the use and disposal of sewage sludge were finalized in 1993.
  - General provisions.
  - Land application.
  - Surface disposal.
  - Pathogen and vector attraction reduction.
  - Incineration.
- NPDES permits (or other appropriate program) shall include requirements for the proper use or disposal of sludge.

# EPA Office of Inspector General March 2002 Report

- EPA does not have an effective program for ensuring compliance with the land application requirements of the federal rules.
- EPA has made little progress in delegating the biosolids program to states.
- EPA cannot assure the public that current land application practices are protective of human health and the environment.

## Oregon State Regulatory Authority

- OAR Chapter 340 – Division 50 rules regulate land application of domestic wastewater treatment facility biosolids, biosolids-derived products and domestic septage.
- Implementing Oregon's biosolids program, Oregon DEQ IMD – December, 2005.
- Biosolids land application in Oregon is regulated through:
  - NPDES or WPCF permit.
  - Biosolids Management Plan.
  - Site authorization letter.

# Oregon NPDES Permit Biosolids Management Requirements

- Monthly sampling for various parameters.
- Record date, volume and locations where biosolids are applied.
- Monthly record of % volatile solids reduction accomplished through stabilization.
- Biosolids must be managed in accordance with the DEQ-approved biosolids management plan and DEQ site authorization letters.
- The biosolids management plan and site authorization letters are incorporated by reference into the permits.

# Biosolids Management Plan

- Pathogen and vector attraction reduction.
- Biosolids monitoring.
- Biosolids storage.
- Transportation.
- Remedial procedures (spills and odor).
- Biosolids land application site management practices.
- Recordkeeping and reporting.

## Site Authorization Letter

- Regulations, rules and permit requirements.
- Treatment processes.
- Transportation.
- Land application activities.
- Application rates and timing.
- Site restrictions
  - Land application shall cease when the potential exists for:
    - Nuisance conditions.
    - Runoff beyond the approved areas.

## Site Authorization Letter (Continued)

- Remedial procedures
  - Cleanup of spills.
  - Odor.
- Monitoring and reporting.
- Notification
  - Notify DEQ of any major changes that could influence biosolids quality or quantity.
- Additional conditions
  - Authorization is subject to revocation if health hazards, environmental degradation or nuisance conditions develop.

## Other Agreements

- Lease agreement with the property owner.
- Agreement for transportation and/or application of biosolids.

# Northwest Environmental Advocates Work to Stop Sewage Sludge Dumping

The NWEA website states:

- EPA regulations are woefully inadequate to protect farm land.
- Oregon and Washington residents are currently at the mercy of this sham of a regulatory program that allows residents to be assaulted by airborne sewage dust, water pollution and, sometimes, horrible odors.

## **NWEA Involvement with Roseburg Urban Sanitary Authority (RUSA) Biosolids Project at Hayden Ranch**

- April 2011 – Neighbors complain to DEQ of improper sludge disposal.
- October 2011 – DEQ issues a new site authorization letter for the Hayden property.
- November 2011 – NWEA files a petition to reconsider the site authorization letter.

## NWEA Petition for Reconsideration

- DEQ failed to follow public notice and comment rules.
- DEQ should better evaluate the effect of biosolids application on the temporary water table.
- DEQ should require buffers to prevent wind drift, nuisance conditions and other Clean Water Act violations.
- DEQ should take additional steps to prevent groundwater contamination.

# River Bend West Irrigation Association Tort Claims

- River Bend files a tort claims notice in May 2012 against RUSA, the City of Roseburg and DEQ alleging:
  - Application of biosolids on the Hayden property does not comply with applicable law.
  - Damages relating to the water used by River Bend and claims of trespass and nuisance.
- DEQ has no information indicating that application of biosolids on the Hayden property has an adverse impact on:
  - Water quality in the Umpqua River.
  - Groundwater at the Hayden property.

# Nuisance, Trespass and Personal Injury Claims Relating to Land Application

- Oregon has a “right to farm” law that limits the ability of third parties to bring claims of nuisance or trespass against certain farm and forest practices.
- Many other states have “right to farm “ laws.
- In December 2012, a lower court in Pennsylvania ruled that the land application of biosolids is a protected farming activity under the state “right to farm” act.

## Another Disturbing Development

- Wahkiakum County, Washington ordinance prohibits the land application of Class B biosolids.
- Lower Washington court rules in October 2012 that the county ordinance is valid and not preempted by state law.
- Kern County case in California will likely conclude that a county ballot measure prohibiting the land application of biosolids is preempted by state law.
- These issues will be decided on a state-by-state basis.

## Being Smart Legally

- Are you meeting all the requirements of your key permitting documents?
  - NPDES permit provisions.
  - Approved biosolids management plan and land application plan.
  - Biosolids site authorization letter.

## NPDES Permit Compliance

- Is the monthly sampling conducted according to the permit and are the specified test methods being followed?
- Are the records for volume and locations of biosolids being kept?
- Are the biosolids applied on DEQ approved sites?

## Biosolids Management Plan

- Plan is incorporated by reference into the NPDES permit.
- Any changes in solid waste management activities that significantly differ from the approved plan require the prior written approval of DEQ.
- Is your current operation consistent with your approved plan?
- Are you complying with all of the procedures and practices described in your current plan?

## Site Authorization Letters

- Is the landowner and the acreage of the property still correct?
- Are you complying with all of the requirements of the site authorization letter?
- Is there the potential for nuisance conditions or runoff beyond the approved areas?

## Recordkeeping

- Do you have all the relevant records?
- Are the records well organized and easily retrievable?
- Are you following your records retention policy?

## Lease Agreement with Property Owner

- Is the City complying with the obligations of the agreement?
- Is the land owner complying with:
  - The biosolids utilization plan?
  - Agricultural practices and government regulations governing biosolids use?

## Agreement for Transportation and/or Application of Biosolids

- Are the parties meeting their respective obligations under the agreement?
- Contractor's insurance obligations.
- Spill response.
- Biosolids loading, transportation and offloading requirements.
- Compliance with specified land application requirements.

# Should You Conduct Your Own Internal Review or Retain an Outside Consultant?

- Before you conduct any review you must be committed to resolving any identified deficiencies as promptly as possible.
- Do not create any incriminating documents.
- Develop a plan for remedying any identified issues in a timely manner.
- Conduct this review on a periodic basis.



**Questions, Comments or Concerns?**